

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK**

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ASSOCIATION OF COMMUNITY	:	Civil Action No.
ORGANIZATIONS FOR REFORM	:	09-CV-4888 (NG)
NOW, et al.,	:	
	:	
Plaintiffs,	:	
	:	(Gershon, J.)
vs.	:	(Bloom, M.J.)
	:	
UNITED STATES OF AMERICA, et al.,	:	
	:	
Defendants.	:	
	-X	

**DEFENDANTS' RESPONSE TO PLAINTIFFS'**  
**OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL AND**  
**CROSS-MOTION FOR AN ORDER DIRECTING DEFENDANT SHAUN DONOVAN'S**  
**IMMEDIATE COMPLIANCE WITH THE COURT'S PERMANENT INJUNCTION**

On March 17, 2010, Defendants moved this Court for a stay of the permanent injunction pending appeal and/or for an interim administrative stay. That motion is currently pending before the Court. Defendants were in the midst of ongoing negotiations with Plaintiffs regarding the status of Mott Haven IV when Plaintiffs filed their Cross-Motion along with their Response to Defendants' Motion to Stay. The declaration submitted by Plaintiffs describes confidential discussions, which Defendants will not address here.

As explained in Defendants' previous filing, the Solicitor General has authorized an application to the Court of Appeals for a stay pending appeal in the event this Court denies Defendants' pending motion. See Doc 53 at 13. The pending motion and this Response are supported by: (1) the substantial possibility that Defendants will prevail on appeal; (2) the harm the government will incur by the immediate and permanent bar against implementation of a

presumptively valid Act of Congress prior to appellate review; and (3) the likely possibility that funds will be disbursed to Plaintiffs that Defendants will be unable to recover. Id. at 3-13.

The purpose behind seeking the temporary administrative stay is to allow Defendants the ability to seek relief before the Court of Appeals before disbursing funds which they are unlikely to recover. Defendant HUD is prepared to comply with the injunction with respect to the pending Mott Haven IV renewal as discussed below, if Defendants' emergency motion to stay the injunction is denied both by this Court and by any appellate court in which Defendants renew that motion (which may include the Court of Appeals and the Circuit Justice). This proposed course of action is intended to preserve Defendants' appellate remedies.

Plaintiffs have stated that they would be willing to permit HUD to not enter into the contract until this Court rules on the pending motion to stay, but only if HUD agrees to sign the contract and make payments under the contract within 24 hours after the court decides the pending stay motion, if the court were to deny the stay. See Pl. Mem. at 16. Should the Court deny Defendants' motion to stay, including the administrative stay, and reject Defendants' proposed course of action, Defendant HUD anticipates it would require 48 hours to sign a renewed HAP contract. See Declaration of Janet Golrick ("Golrick Decl.") at ¶ 9 n.1. Signature of the contract can be effected more quickly than can processing of the payments through the federal payment system, but still requires the participation of three parties, including not only HUD and the Mott Haven owner, but also the public housing authority, which is the contract administrator. Id. Payment would, however, be made promptly after execution of the contract. Id. To address the possibility that the Court's injunction may be stayed or vacated on appeal, HUD will include a provision in the HAP renewal contract with the owner of Mott Haven IV which states that if Section 418 of Div. A of Pub.

L. No. 111-117 is in effect or is determined to apply, housing assistance payments under the renewal contract shall be suspended until such time as section 418 ceases to be in effect or no longer applies.<sup>1</sup>

Id. at ¶ 10.

Dated: March 30, 2010

Respectfully Submitted,

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<sup>1</sup> In addition, Plaintiffs' Opposition states that they have received no "official" confirmation that OMB has complied with the injunction. See Pl. Mem. at 11, n.3. Defendants confirm that OMB has complied with the injunction and has made this information publicly available. See [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-12.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-12.pdf).

**CERTIFICATE OF SERVICE**

I, Bradley H. Cohen, hereby certify that on this 30th day of March, 2010, I did cause true and correct copies of the above and foregoing instrument, Defendants' Response to Plaintiffs' Opposition to Defendants' Motion to Stay Pending Appeal and Plaintiffs' Cross-Motion, to be served electronically on counsel for plaintiffs.

/s/ Bradley H. Cohen  
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